

its economic impact, and its interference with reasonable investment-backed expectations. The governmental action here was an important one – the protection of the public’s right of freedom of speech and expression. The economic impact and interference with investment-backed expectations were negligible at best because the shopping center was already open to the public and there was no proof that allowing political opinions to be expressed interfered with the commercial purposes of the shopping center or in any way impaired the shopping center’s underlying value. The Court emphasized that the fact that the shopping center owner could still impose time, place and manner regulations over the political speech would further ensure that no improper interference or negative economic impairment occurred. Just as the Commission found that its prohibition in the *OTARD* proceeding and the Supreme Court in the *PruneYard* case to not be a taking under the *Penn Central* test, the nondiscrimination requirement Sprint advocates herein should not be deemed a taking. Such a requirement will advance important Congressional goals, as expressed in the 1996 Act of opening the local communications market to competition and allowing end users to select the their carrier of choice. Further, such access should not have a negative economic impact on the building owner because access has already been granted to one carrier, and allowing other carriers to access the MTE should not create additional burden; moreover, provided the owner can still exercise reasonable controls over the time and location of the access, such access should not interfere with the commercial purposes of the MTE. Finally, as the Commission itself noted, multiple carriers serving a building may increase the desirability of the building to potential tenants.³⁸ Nondiscriminatory access will have little if any impact on

³⁸ *NPRM* at ¶ 61.

investment-backed expectations and should actually enhance, not hinder, both the commercial purposes of the MTE and its overall value.

B. Other Building Access Issues

The Commission seeks comment on whether it should adopt a rule prohibiting carriers from entering into exclusive arrangements.³⁹ As discussed above, the Commission should prohibit any and all telecommunications carriers from entering into any arrangement whereby that carrier, or a select group of carriers, has the exclusive right to provide telecommunications services directly or indirectly, regardless of the technology used, to an MTE. Without such a prohibition, Congress' desires for local competition and consumer choice will be frustrated. Without repeating all that was set forth above, the Commission has ample authority to impose such a restriction on carriers and should do so on a national basis.

The Commission also seeks comment on whether there might be certain, limited instances where exclusive arrangements are justified and should be permitted.⁴⁰ Sprint does not believe that any exclusive arrangements can be justified and urges the Commission to prohibit carriers from entering into any exclusive arrangements with building owners or managers whereby telecommunications services may only be provided, directly or indirectly, by one or a limited number of providers. Without a prohibition on all exclusive arrangements, the "selected" carrier or carriers become a bottleneck, potentially preventing the development of local competition and clearly preventing some consumers from reaching their carrier of choice.⁴¹

³⁹ *Id.* at ¶ 64.

⁴⁰ *Id.*

⁴¹ The Commission should also consider broadening the prohibition on carriers entering exclusive arrangements to also prohibit carriers from entering into arrangements with MTE owners that provide the

Footnote continued on next page

The Commission also seeks comment on whether modifications to its rules governing the demarcation point in MTEs are necessary. In order for a competitive carrier to provide a quality of service equal or superior to that provided by the ILEC, it is essential that technicians have access to the NID for testing and troubleshooting with relative ease. Regarding the definition of the demarcation point and placement of the NID, the demarcation point should be defined with enough flexibility to allow for different designs and different technologies, including various approaches to points of entry. Sprint urges the Commission to adopt an appropriate definition that equates the demarcation point to the NID, eliminating the possibility of a demarcation point that is closer to the customer than where the telecommunications carrier's equipment and regulated responsibility terminates. The Commission should direct the states to adopt the same definition. A single, inflexible definition of the demarcation point would limit the options for providing service in various configurations of the multiple-tenant environment structure.

In multi-family buildings, such as high-rise apartment buildings or student dormitories, the NID will establish the demarcation point on the exterior of the building or in the equipment room provided at the location, depending on the design of the building. In buildings where multiple floors exist and there is already a terminal equipment room on each floor, a NID unit should be placed on the main floor where the entrance cable terminates in the equipment room.⁴²

carrier with any preferential treatment in rates, terms, and conditions. While such a "negative" MFN may be difficult to enforce (carriers won't necessarily know nor are they necessarily entitled to know the terms of the MTE owner's arrangement with another carrier), it will nevertheless provide another weapon in the Commission's arsenal to foster and promote a competitive marketplace.

⁴² See Diagram 5 for a graphical depiction of Placement of the NID-Multi-tenant building with multiple floors.

In buildings with multiple floors where there is a terminal on the exterior of the building and there is only one terminal to serve the entire building, then only one NID should be placed.⁴³ In a complex where multiple buildings exist (for example, a typical apartment complex), a NID should be placed at each building location, which allows a demarcation point closest to the customer.⁴⁴

In multi-tenant business buildings, such as office buildings with leased suites, the NID will establish the demarcation point on the exterior of the building or in the equipment room provided at the location, depending on the design of the building. In multi-tenant business buildings where multiple floors exist and there is already a terminal equipment room on each floor, a NID unit should be placed on the main floor where the entrance cable terminates in the equipment room.⁴⁵ In buildings with multiple floors where there is a terminal on the exterior of the building and there is only one terminal to serve the entire building, then only one NID should be placed.⁴⁶ In multi-tenant business complexes where multiple buildings exist, the NID should be placed at each building location, which allows a demarcation point closest to the office or suite of the customer.⁴⁷

For other multi-tenant communities, such as manufactured housing communities, with permanently placed mobile homes, and non-permanent homes such as travel trailers and motor

⁴³ See Diagram 6 for a graphical depiction of Placement of the NID-Multi-tenant building, use of a single NID.

⁴⁴ See Diagram 7 for a graphical depiction of Placement of the NID for Multiple buildings.

⁴⁵ See Diagram 5 for a graphical depiction of Placement of the NID-Multi-tenant building with multiple floors.

⁴⁶ See Diagram 6 for a graphical depiction of Placement of the NID-Multi-tenant building, use of a single NID.

⁴⁷ See Diagram 7 for a graphical depiction of Placement of the NID for Multiple buildings.

homes, the NID must remain easily accessible for both the technician and customer and therefore cannot be placed under the mobile home. The NID should either be placed on a power post, or a trailer stake specially manufactured for NID placement, but should never be attached to the home.

Placing the NID on the outside of buildings is generally a good idea for all parties involved. Multiple-tenant building owners do not have to be concerned with locking and unlocking their equipment rooms every time a tenant has a problem with his or her telephone line, or every time a tenant decides to switch providers. Also, installation and repair technicians can easily gain access to vital equipment to perform an installation or do testing and troubleshooting. In addition, tenants don't have to be present, and don't have to worry about the landlord and technician intruding into their leased space for purposes of telephone installation or repair.

Finally, the Commission requests comment on whether it should, for telecommunications services, adopt rules similar to those adopted in the *OTARD* proceeding that implement Section 207 of the 1996 Act and protect the ability of owners and tenants to place antennas on their property and leasehold to receive fixed wireless signals carrying video programming. The Commission has the authority to extend the scope of its rules to provide protection for telecommunications services, and should do so. Section 207 specifically targets video programming provided over fixed wireless services such as MMDS and ITFS. However, when the 1996 Act was enacted, it is generally accepted that the Commission's rules did not permit MMDS or ITFS licensees to provide two-way services. Thus, neither service was capable of providing voice telecommunications services and it is reasonable to assume that Congress was aware of that fact when it enacted Section 207 of the 1996 Act.

It was not until two years later, in 1998, that the Commission amended its rules to enable MMDS and ITFS licensees to provide two-way transmission services, thus enabling the provision of telecommunications services.⁴⁸ Given Congress' desire to promote local competition and the deployment of advanced services, it seems likely that Congress would have included voice telecommunications service within the protected services of Section 207, had such fixed wireless services been legally capable of providing telecommunications services.

However, it is really not necessary to assume Congressional intent in order for the Commission to adopt rules, similar to those adopted under Section 207, to protect a tenant's or a property owner's right to place an antenna on their leasehold or property for purposes of receiving and sending telecommunications services. Such rules are clearly within the Commission's broad authority, as noted above, to implement the local competition provisions of the 1996 Act. Furthermore, such a right would not create more of a taking than the rules already adopted by the Commission to protect viewers' ability to receive video programming. Indeed, where a single MMDS licensee is providing both video and telecommunications services, the customer only needs one antenna, *i.e.*, the same antenna used to receive video programming can be used to receive and send telecommunications services. The antenna for telecommunications services, if one is needed, is no more of a burden on the landlord or homeowners' association than the antenna for video programming and is equally in the public interest.

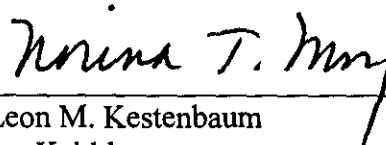
⁴⁸ *Amendments of Parts 21, and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmission*, MM Docket 97-217, Report and Order, 13 FCC Rcd 19112 (1998).

V. CONCLUSION

If local competition is to become a reality, the Commission must adopt national rules to allow competitive carriers to obtain access to MTEs equivalent to that enjoyed by the incumbent wherever feasible. These rules should (1) require utilities to permit access to telecommunications carriers to rooftops, conduits and risers on private property owned or controlled by the utility; (2) require ILECs to offer access to riser cable and inside wire they own or control within a MTE as a UNE; (3) require MTE owners who allow a telecommunications carrier access to his facilities to also make such facilities available to other carriers on a nondiscriminatory basis; and (4) prohibit exclusive arrangements between carriers and building owners. These rules are within the scope of the Commission's authority, and will help to ensure that end users in MTEs are able to obtain local and access services from the carrier of their choice.

Respectfully submitted,

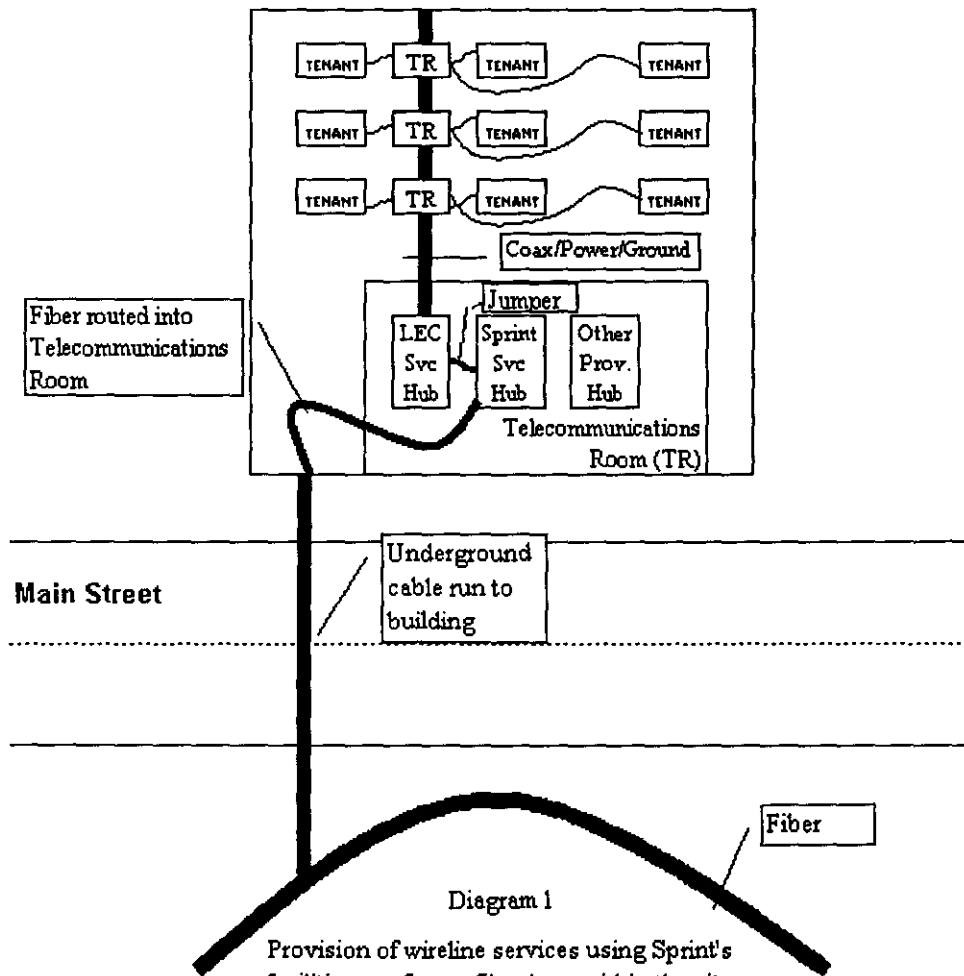
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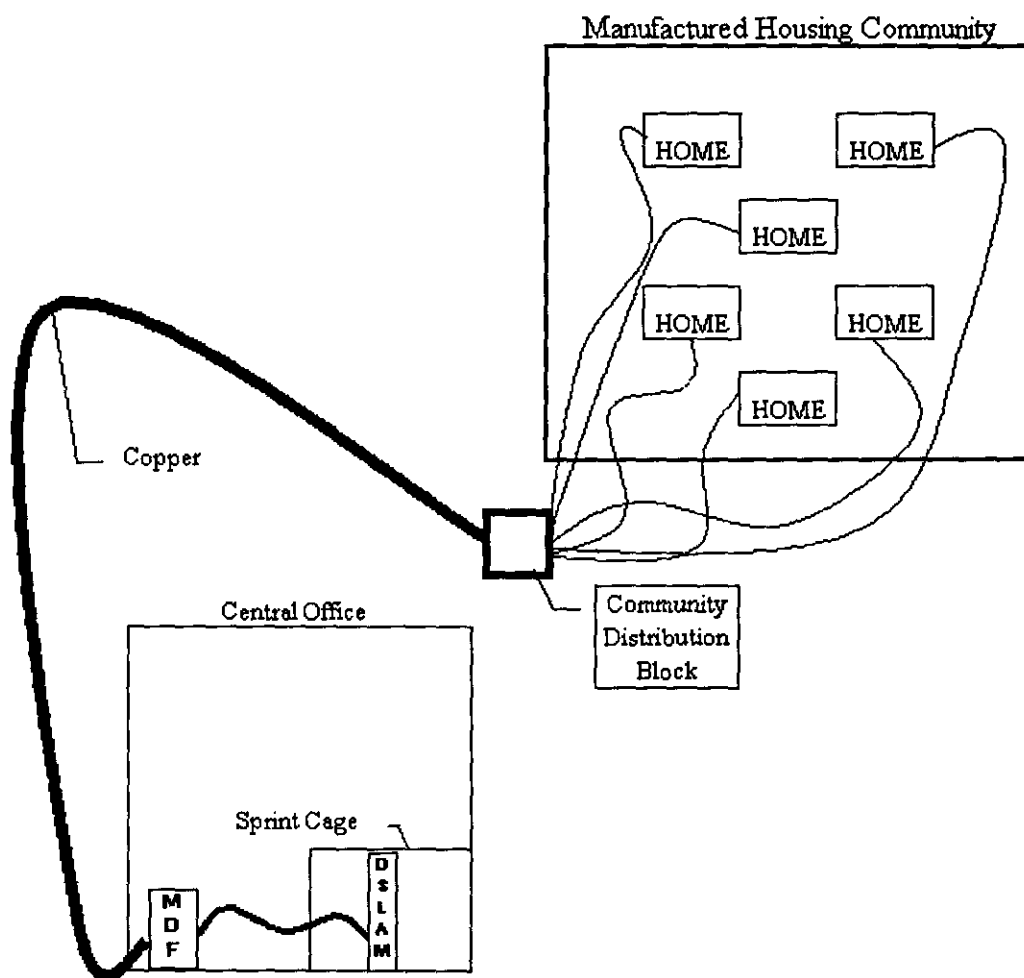


Diagram 2
Provision of wireline service to a multiple tenant community - lease local loop.

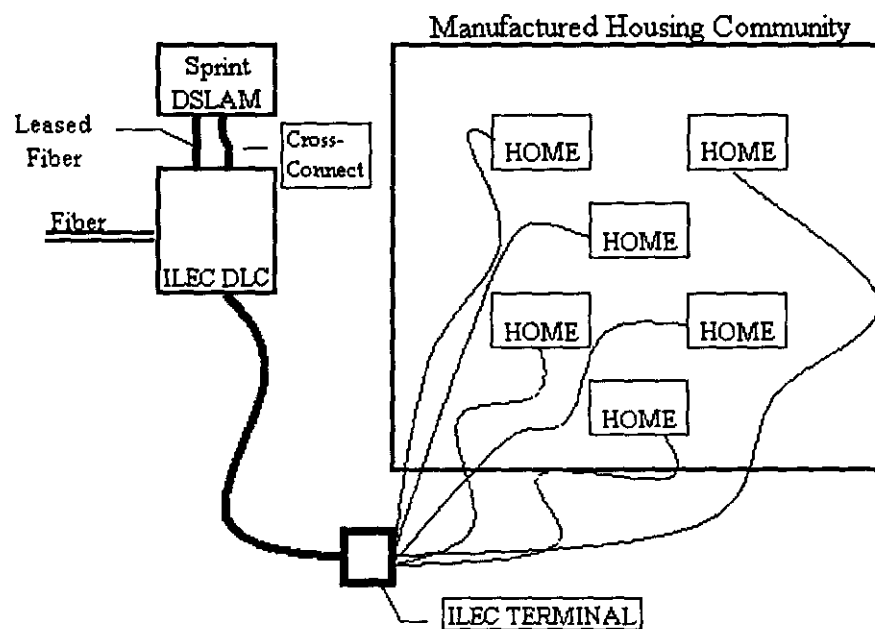


Diagram 3
Provision of wireline service to a multiple tenant community - collocate mini-DSLAM.

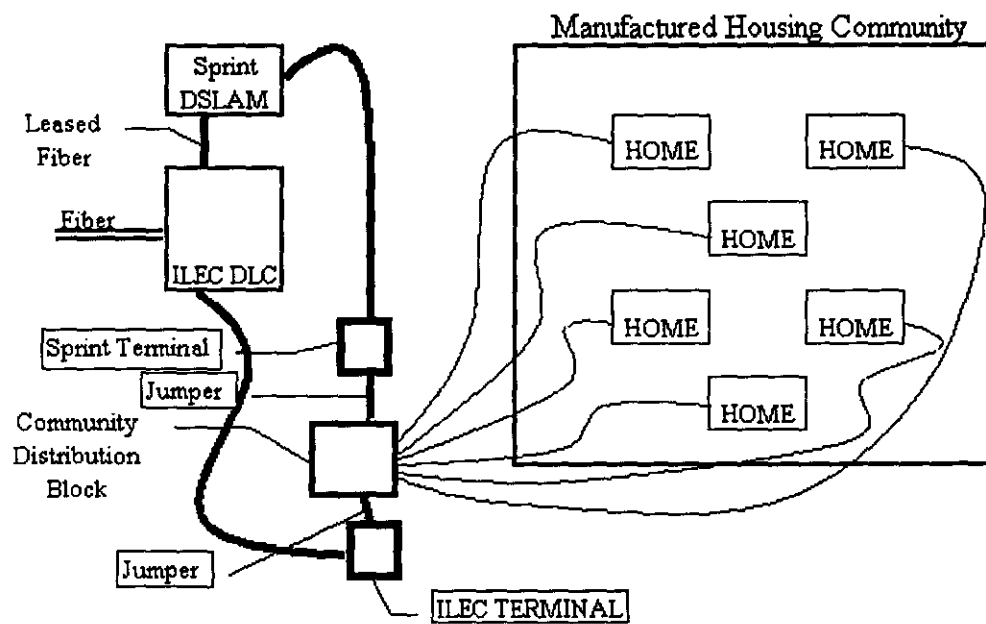


Diagram 4

Provision of wireline service to a multiple tenant community - collocate mini-DSLAM and build terminal.

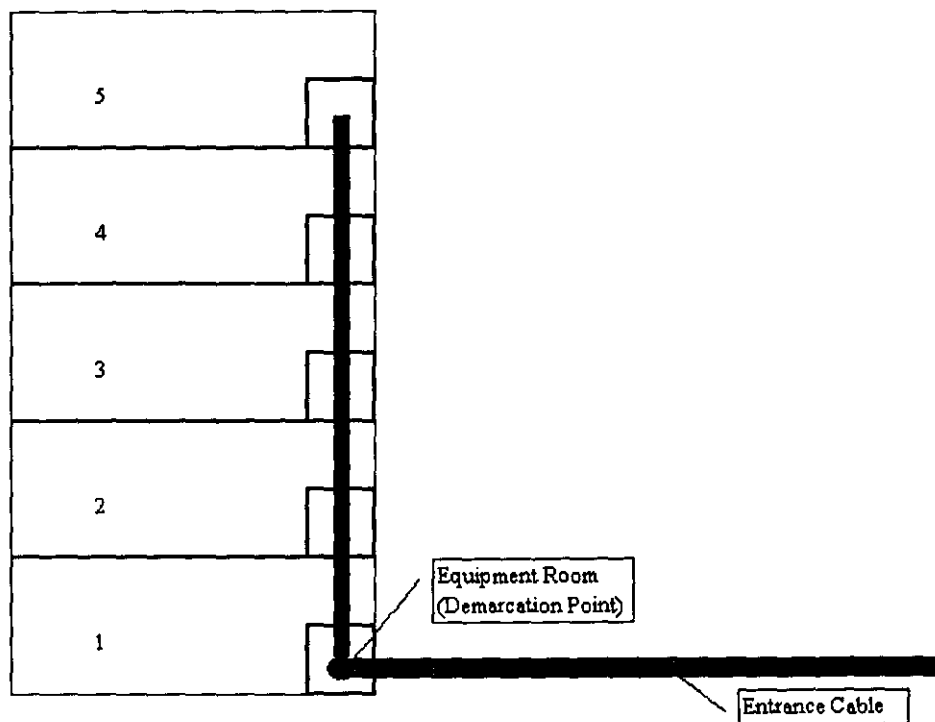


Diagram 5
Multi-Family, Multi-Business
Placement of NID in buildings w/multiple floors

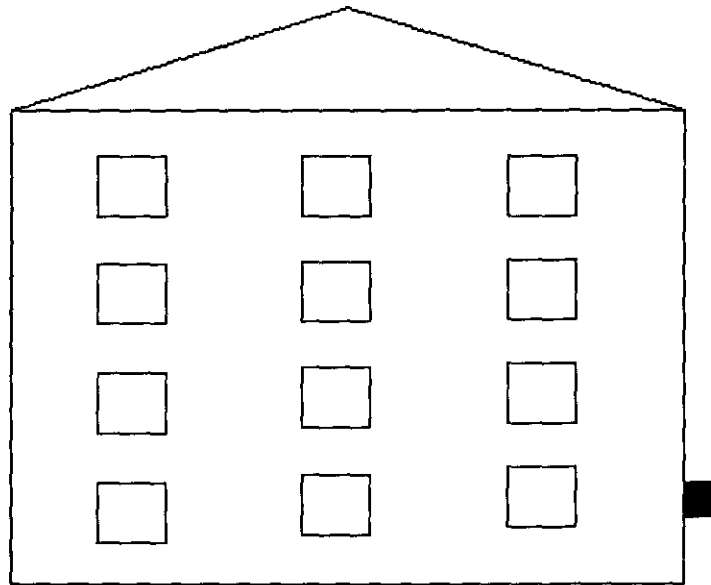


Diagram 6
Multi-family or Multi-Business Use of a Single NID
Ex. Student Housing, Apartment Bldg, Office Bldg

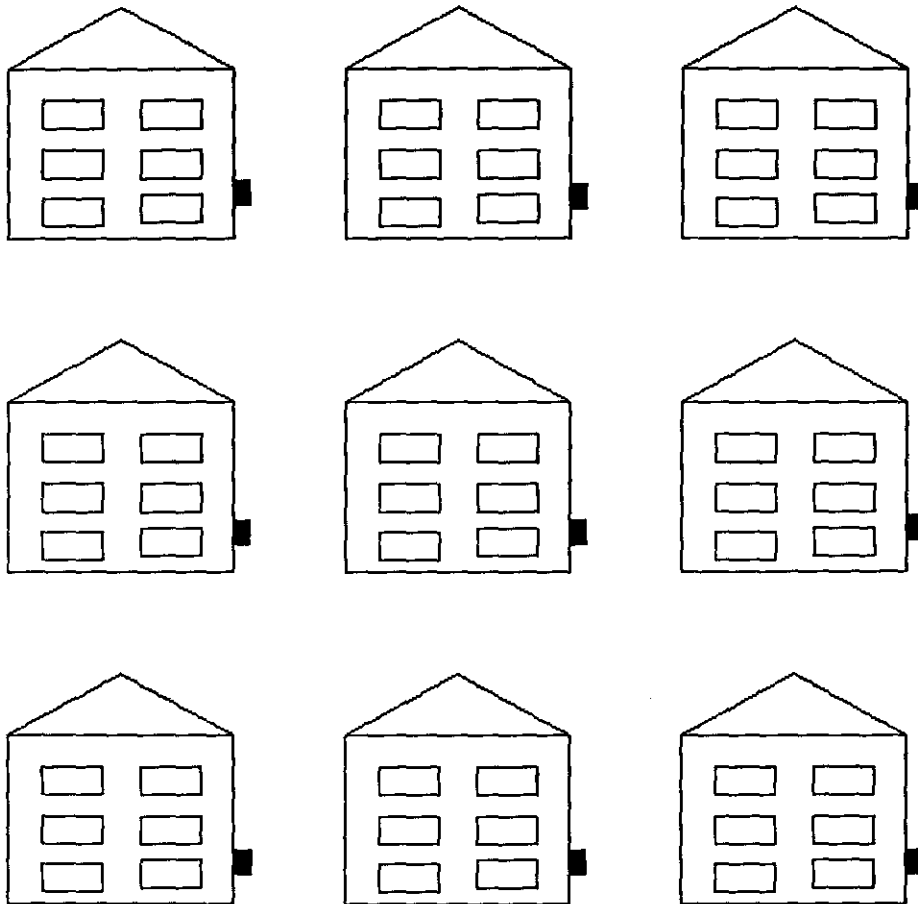



Diagram 7
NID Placement for Multiple Buildings w/in a MTE
Ex. Typical Apartment Complex

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Comments of Sprint Corporation** was sent by hand or by United States first-class mail, postage prepaid, on this the 27th day of August, 1999 to the parties on the attached list.


Christine Jackson

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